1442.

SUPREME COURT OF THE UNITED STATES.

No. 140.

RENE LA ROCHE AND WIFE, AND AL., PLAINTIFFS IN ERROR,

vs.

RICHARD JONES AND WIFE.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

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UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between John Doe, as lessee of Richard Jones and Mary Jones, his wife, plaintiff, and Rene Laroche and Mary, his wife, Inez R. Ellis, Stephen P. Ellis, and Thomas La Roche Ellis, minor heirs of Thomas G. Ellis, deceased, by their guardian ad litem, Charles G. Dahlgren, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the 1st Monday of December, in the year of our
[SEAL.] Lord one thousand eight hundred and forty-five, and of the independence of the United States the 70th.

Issued the 24th day of November, 1846.

W. H. BROWN, *Clerk*
C. C. U. S. So. Dist. Miss.

Citation.

UNITED STATES OF AMERICA, *ss:*

To John Doe, as lessee of Richard Jones and Mary Jones, his wife, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein Rene La Roche and Mary, his wife, and Inez R. Ellis, Stephen P. Ellis, and Thomas La Roche Ellis, minor heirs of Thomas G. Ellis, deceased, by their guardian ad litem, Charles G. Dahlgren, are plaintiffs, and you are defendant in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi,

this 24th day of November, in the year of our Lord one thousand eight hundred and forty-six, and in the 71st year of the independence of the United States.

S. J. GHOLSON.

Executed on Daniel Mayes, attorney for plaintiffs, 28th November, 1846.

THOMAS FLETCHER, *Marshal.*
Per RICH'D FLETCHER, *D. M.*

JOHN DOE, ex. dem. Richard Jones and wife,
vs.
The heirs of THOS. G. ELLIS, deceased.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and forty-six.

Be it remembered, that heretofore, to wit, on the first Monday of October, in the year of our Lord one thousand eight hundred and twenty-three, came Richard Jones and Mary Jones, his wife, by their attorneys, Poindexter and Caldwell, into the district court of the United States for the district of Mississippi, and brought into said court their certain declaration against Richard Roe, with notice to Jesse Mabery; which said declaration, with the notice thereunder written, is in the words and figures following, to wit:

UNTED STATES OF AMERICA, *State of Mississippi:*
District court, October term, 1823.

John Doe, a citizen of the State of Kentucky, by his attorney, complains of Richard Roe, a citizen of the State of Mississippi, in custody, &c., of plea of trespass and ejectment, for this, that whereas Richard Jones and Mary Jones, his wife, citizens of the State of Kentucky, on the 1st day of January, in the year of our Lord 1823, at the State and district of Mississippi aforesaid, did grant, demise, and to farm let unto John Doe one tenement, consisting of two messuages, two orchards, two gardens, one thousand acres of arable land, one thousand acres of pasture, one thousand acres of meadow, and two thousand acres of surrounding woodland, with the appurtenances, situate, lying, and being in said State and district of Mississippi, on the waters of Buffaloe creek, in Wilkinson county, which demised premises were originally granted by the Spanish government of West Florida to a certain William Cocke Ellis, by letters patent bearing date the 16th day of February, 1789, adjoining the land of Jesse Carter, John Ellis, sen., Mary Ellis, and vacant lands. To have and to hold said demised premises, with the appurtenances, unto the said John Doe and his assigns, from and after the said first day of January, 1823, for, and during, and until the full end and term of

twenty years then next ensuing, and to be fully ended and completed. By virtue of which demise the said John Doe afterwards, to wit, on the 2nd day of January, 1823, entered into said tenement, with the appurtenances, and became, and was thereof, possessed for the term so to him thereof granted. And said John Doe being thereof so possessed, the said Richard Roe afterwards, to wit, on the 3d day of January, 1823, at the State and district of Mississippi aforesaid, with force and arms, entered into said tenement, with the appurtenances, which said Richard Jones and Mary, his wife, had demised to said John Doe in manner and for the term aforesaid, which is not yet expired, and then and there turned and ejected said John Doe from said tenement, with its appurtenances aforesaid, and from the enjoyment of his term therein as aforesaid granted, and other wrongs and enormities then and there did, to the great damage of the said John Doe, and against the peace and dignity of the United States of America; wherefore said John Doe says he has sustained damage to the amount of $5000, and therefore brings his suit, &c.

POINDEXTER & CALDWELL,
Attorneys for Plaintiff.

To JESSE MABERY: I am informed that you claim title to, or are in possession of, the whole or some part of the premises in this declaration of ejectment mentioned, and I being sued in this action as casual ejector only, and having no claim or title to any part of said premises, do advise you to appear on the first day of the next October term of the United States district court holden for the Mississippi district in the city of Natchez, and, by some attorney of that court then and there to cause yourself, by a rule at said court, to be made defendant herein in my stead; otherwise I shall suffer judgment to go against me by default, and you will be turned out of possession.

Your loving friend till death,
RICHARD ROE.

AUGUST 6, 1843.

Marshal's return.—Served personally, 12th August, 1823.
H. GRIDLEY, *Deputy Marshal.*

Afterwards, to wit, at the October term of the said district court of the United States for the district of Mississippi, to wit, on the sixth day of October, in the year of our Lord one thousand eight hundred and twenty-three, came as well the said John Doe, by his attorneys aforesaid, as the said Jesse Mabery, by his attorney, and by consent it is ordered that Jesse Mabery be made defendant in the room of the now defendant Roe, and do appear forthwith at the suit of the plaintiff, and receive a declaration in an action of trespass and ejectment for the premises in question, and forthwith plead thereto not guilty; and, upon the trial of the issue, confess lease, entry, and ouster, and insist upon the title only; and if, upon the trial of the said issue, the said Jesse Mabery shall not confess lease, entry, and ouster, whereby the plaintiff shall not be able further to so prosecute his suit against the said Jesse

Mabery, then no costs shall be allowed for not prosecuting the same, but the said Jesse Mabery shall pay costs to the plaintiff in that case to be taxed; and it is further ordered, that if, upon the trial of the said issue, a verdict shall be given for the said Jesse Mabery, or it shall appear that the plaintiff shall not further prosecute his said suit for any other cause than for not confessing lease, entry, and ouster, then the lessee of the plaintiff shall pay to the said Jesse Mabery costs in that case to be adjudged; and thereupon the said defendant, by his attorney, come and defend the force and injury, when, &c., where, &c., and for plea say, that he is not guilty of the trespass and ejectment in the said plaintiff's declaration mentioned, and of this he puts himself upon the country, &c.

GRIFFITH & QUITMAN,
READ & DAVIS,
Attorney for defendants.

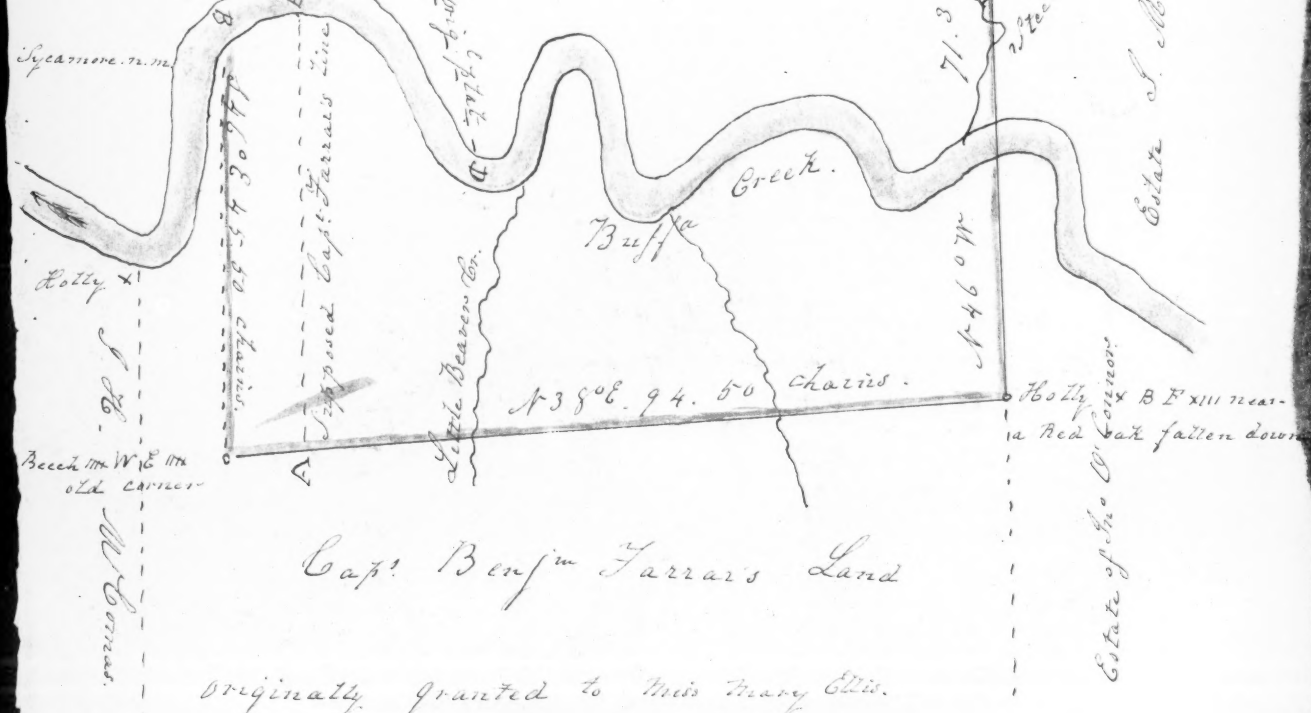
And the said plaintiff doth the like.

POINDEXTER & CALDWELL,
For Plaintiffs.

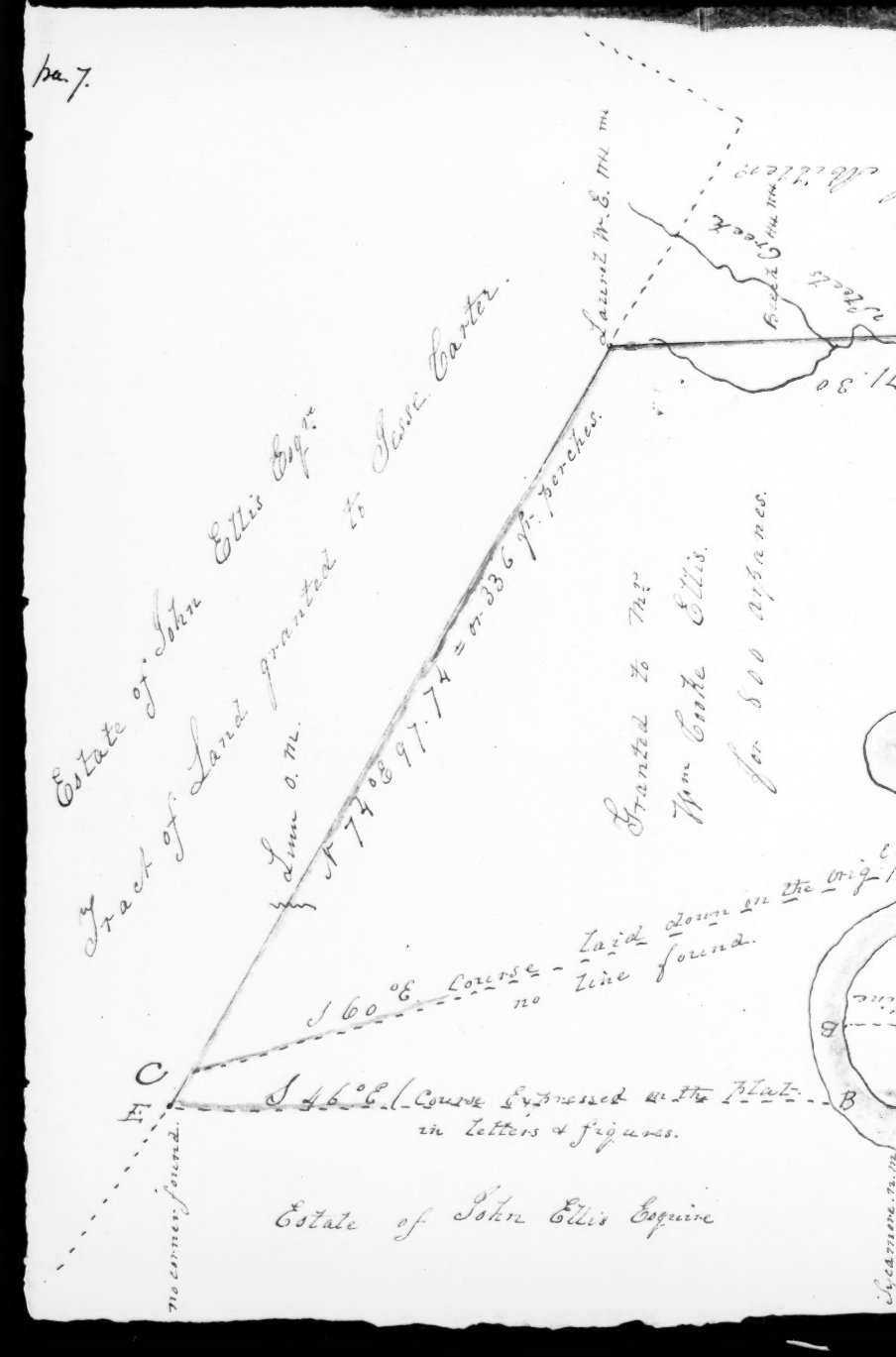
And thereupon it is ordered by the court, with the assent of the parties and their attorneys, that a survey of the premises in question, be made by George Dougharty, esq., surveyor of the county of Adams, on either party giving twenty days notice to the opposite party, or his attorney, of the time and place of commencing or executing the same; and that the surveyor do make out and return to the clerk's office three fair plats of his survey.

And afterwards, to wit, at the said October term last mentioned, it was ordered by the court, by consent of counsel of both parties, that Thomas Ellis and Mary Ellis, infants, be entered as defendants in lieu of Jesse Mabery, the present defendant, and that Elijah Smith be appointed their guardian ad litem; and thereupon it is ordered that they appear forthwith by their said guardian ad litem, and receive a declaration in an action of trespass and ejectment for the premises in question, and forthwith pleaded thereto not guilty, and upon the trial of the issue confess lease, entry, and ouster, and insist upon the title only; and if, upon the trial of the said issue, the said Thomas Ellis and Mary Ellis, by their guardian ad litem, shall not confess lease, entry, and ouster, whereby the plaintiff shall not be able further to so prosecute his suit against the said Thomas Ellis and Mary Ellis, by their guardian ad litem, then no costs shall be allowed for not prosecuting the same; but the said Thomas Ellis and Mary Ellis, by their guardian ad litem, shall pay costs to the plaintiff in that case to be taxed. And it is further ordered, that if, upon the trial of the said issue, a verdict shall be given for the said Thomas Ellis and Mary Ellis, by their guardian ad litem, or it shall happen that the plaintiff shall not further prosecute his said suit for any other cause than for not confessing lease, entry, and ouster, then the lessee of the plaintiff shall pay to the said Thomas Ellis and Mary Ellis, by their guardian ad litem, costs in that case to be adjudged.

And the said defendants by their attorneys come and defend the force


Sycamore. 12. ins.
Holly
Beech. ins. W. 16 E. ins. old carriage
W. Corner.
Proposed Capt. Farrar's line
Little Beaver Cr.
Buffalo Creek.
N 38° E. 94. 50 chains.
Holly & B. F. XIII ins. a Red Oak fallen down
Estate of Jno. O'Connor.
Estate of
Capt. Benjn Farrar's Land
originally granted to Miss Mary Ellis.

No. 7.


Estate of John Ellis Esq.r
Tract of Land granted to Isaac Carter.
Line 0. m.
N 74° E 97.74 = 97.33 W. perches.
Granted to Mr.
from Estate Ellis.
for 500 acres.
Laurel W. E. mile mo
Beech
Beech
Beech
C
E
S 46° E Course Expressed in the Platt in letters & figures.
S 160° E Course - Laid down in the Orig.
no line found.
B
No corner found.
Estate of John Ellis Esquire

and injury when, &c., and say they are not guilty of the trespass and ejectment in the said declaration mentioned; and of this they put themselves upon the country.

GRIFFITH & QUITMAN,
READ & DAVIS,
For Defendants.

And the plaintiff doth the like.

POINDEXTER & CALDWELL,
For plaintiff.

And thereupon it is ordered by the court, with the assent of the parties, and their attorneys, that a survey of the premises in question be made by George Dougherty, esquire, surveyor for the county of Adams, by either party giving twenty days notice to the opposite party, or his attorneys, of the time and place of commencing or executing the same, and that the surveyor do make out and return to the clerk's office three fair plats of his survey.

And then the cause was continued.

Copy of order of survey directed to surveyor aforesaid.

UNITED STATES OF AMERICA,
District of Mississippi, ss:

In the district court of the United States, for the district of Mississippi.

District court of U. S., to October term, 1823.

RICHARD JONES and Wife's lessee
vs.
JESSE MABERY.

"Ordered by the court, that Thomas Ellis and Mary Ellis, infants, be entered as defendants in lieu of Jesse Mabery, the present defendant, and that Elijah Smith be appointed their guardian *ad litem*. It is further ordered by the court, with the assent of the parties, and their attorneys, that a survey of the premises in question be made by George Dougherty, esquire, surveyor for the county of Adams, by either party giving twenty days notice to the opposite party, or his attorney, of the time and place of commencing or executing the same; and that the surveyor do make out and return to the clerk's office three fair plats of the survey.

DISTRICT OF MISSISSIPPI, *ss:*

I, William Burns, clerk of the district court of the United States for said district, do certify the foregoing to be a true copy from the minutes of said court.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of said court, at Natchez, the 6th December, 1823.

WM. BURNS, *Clerk*.

[For plat see original, page 8.]

WILKINSON COUNTY,
State of Mississippi.

Pursuant to an order from the honorable district court of the United States, Mississippi district, dated at October term, 1823, to me directed, I have resurveyed the tract of land originally granted by the Spanish Government to Mr. Wm. Cocke Ellis, and find the same to be bounded and situated in the manner represented in the above plat.

Explanations.—The dotted line A B is the supposed position of Captain Farrar's line, no corner found. The line C D appears on the original plat to run about S. 60° E., but here I found no line. The line E E is conjectural, (not having the original plat of the adjoining tract granted to John Ellis, sr.,) and only supported by the course represented on the plat, viz., S. 46° E.

The corner sand distances run and measured by me are expressed on the lines of the plat.

Surveyed 20th March, 1824.

GEORGE DOUGHARTY, *Surveyor*
Of Adams county, Mississippi.

And afterwards, to wit, at the December adjourned session of the district court last aforesaid, in the year of our Lord one thousand eight hundred and twenty-five, to wit, on the 16th day of December, A. D. 1825, until which time this cause was regularly continued, came the parties aforesaid by their respective attorneys, and a jury being called, came to wit: Ruben Marshal, John S. Young, Ruben Powell, Joseph Powell, Noel Rushing, Robert Houghton, David C. Miller, J. P. Walworth, David Miles, Robert Cason, Thomas Barnard, and Henry Moss; who being empannelled, tried, and sworn to speak the truth upon the issues joined, do say upon their oaths, that the defendants are guilty of the trespass and ejectment in manner and form as the said plaintiff has declared against them, and they assess the damages, by reason of the trespasses and ejectment aforesaid, to the sum of one cent.

Subject, however, to the opinion of the court on the case agreed.

Whereupon the case was submitted to the court upon the following evidence, for its judgment thereon:

Evidence of Plaintiff.

Copy of grant of Spanish Government to William Cocke Ellis.

LUISIANA, 1789, DISTRITO DE NATCHEZ.

[For plat, see original.]

Don Carles Trudeau, agrimensor rl. y particular desta provincia de la Luisiana.

Certifico, que hasido medido a favor de Don Guillremo Cocke Ellis uno terreno de ochocientos arpanes quadra de superficie, medides con la perche de la ciudad de Paris de diez y ocho pies de rey de largo, segun

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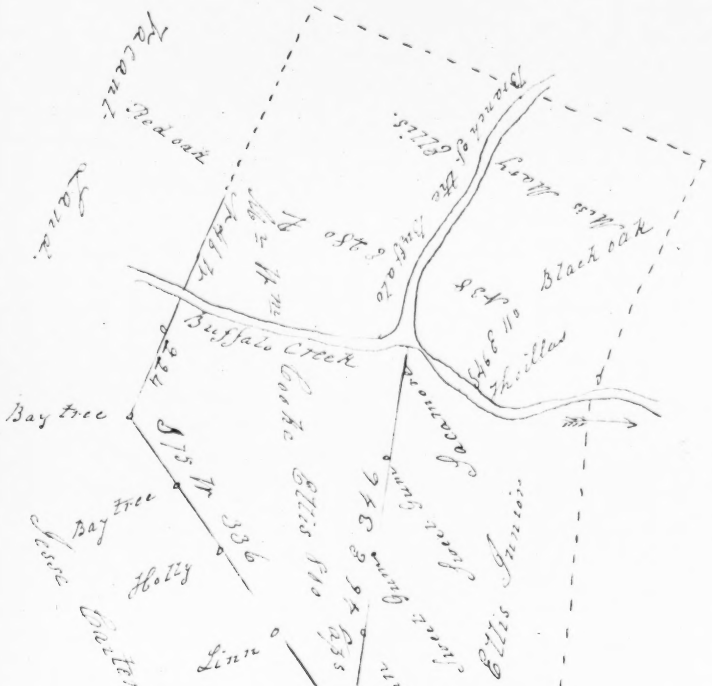
No 149
La Roche & Nixdal
to
Jones & Ivy

Copy of Grant of Spanish Government to William Cooke Ellis.

Luisiana 1739.
Distrito de Natchez.



es uso de esta colonia. Cuyo terrano situado en el distrito de Natchez, parage de Buffaloe, ocoma veinte y cinco miles de distancia al sud este del Fuerte Panmure, lindando del Oeste con tierras de Jesse Carter, del este con tierra de Mr. John Ellis, senior, y a los demas lados con terranos del dominio de S. M.; los arboles señalados para linderos con las explicaciones del plano esto in el idioma Ingles para la intelligencia del interresado, et apeo abiendo sido pratisado en virtue del decreto de su Sen'r Don Estevan Miro, gov'r g'ral, &c., &c., con fech'o del dia veinte Marzo del ano passado de mil setecientos ochenta y tres; de todo lo que doy fe, y para que couste doy la presenta certif'n corret plana fig'o, que acompana arresados en conformida del apeo del dia dies y siete Octubre del ano passado. Febrero 11, de 1789.

CARLOS TRUDEAU, *Ag'r.*

Don Estevan Miro, coronel de los reales exercitos, gobernador intendente de la provincia de la Louisiana, Florida occidental, e inspector de sus tropas, &c.

Vistas las antecedentes diligencias practisadas por el agrimensor de esta provincia, Don Carlos Laveau Trudeau, sobre la posesion que ha dado à Don Guillermo Cocke Ellis, de la cantidad de ocho cientos arpanes de tierra quadrádos situados en el distrito de Natchez, en el parage llamado vulgarmente Bufaloe, lindando de un lado à las tierras de Jesse Carter, y del otro a Juan Ellis, y a los demas lados con terrenos vacantes y del dominio de Su Magestad, como lo demuestra el plano figurativo que antecede; y reconociendo est. arreglado al orden de agrimensura, y à las concesiones de los anted'hos circumvecinos singar a estos seles cause perjuicio alguno in que lo hay an reclamado, y si bien consentido segun justificas asistancia a d'has operaciones oprobandolas como las aprobamos. Uzando de la facultad que el rey nos tiene concedido, et orgarmos en su real nombre al servo d'ho Guillermo Cocke Ellis, los expresados ocho cientos arpanes de tierra quadrados parage, como suyos propios disponga de ellos, y los usufrûte reglandose à las mencionadas diligen's, y observando las conditiones prevenidas en el reglemento del asunto. Damos el presente firmado de n'ra mano, sellado con el sello de n'ras armas, y refrendado por el infræscripto secretario por Su Magestad de este Gobierno en la Nueva Orleans, à diez y seis de Febrero de mil sete cientos ochenta y nueve.

ESTEVAN MIRO,

[L. S.] Per m'do de sus [secreta]ria

ANDRES LOPEZ ARMESTO.

Entered on record at Natchez, in the county of Adams, Mississippi territory, in Liber B, folios 316 and 317, the 8th day of October, A. D. 1801. JOHN HENDERSON, *Recorder.*

Endorsement written on the margin of the above grant: "Land office, west of Pearl river. This plat, certificate, and letters patent, are recorded in the Register's book C, of written evidences of claims, folios 534 *a* 536; examined and corrected by

"JNO. GIRAULT, *Translator.*"

Copy of the paper attached to the above grant.

"Eight hundred arpents of land, granted to him, on the waters of Bufaloe creek, about twenty-five miles southeast from the fort, bounded by the land of Jesse Carter, John Ellis, and vacant lands.

"Warrant dated the 20th March, 1783.

"Surveyed the 17th of October, 1788."

Certified the 11th February, 1789, patent dated the 16th February, 1789.

JNO. GIRAULT, *Translator.*

Copy of translation of said grant.

Dn. Carlos Trudeau, royal and civil surveyor of this province of Louisiana:

I certify that a tract of land of eight hundred square arpents has been measured in favor of Dn. William Cocke Ellis, with the perch of the city of Paris, eighteen feet long, as is in use in this province; which tract is situated in the district of Natchez, on the Buffaloe, at about twenty-five miles distance to the southeast of Fort Panmure, bounded on the west by the land of Jesse Carter, on the east by the land of Mr. John Ellis, senr., and on the other sides by the lands belonging to his majesty.

The trees marked for limits, with the explanations on the plan, are so in the English language, for the better understanding of the party interested, the delimitation (measurement) having been made by virtue of the decree of his excellency Dn. Stephen Miro, governor general, under date of the 20th of March, 1783; all of which I attest, and in order that it may so appear, I give the present certificate, with the herewith annexed figurative plan, drawn up in conformity with the measurement of 17th October of last year.

11*th February*, 1789.

CARLOS TRUDEAU.

Dn. Stephen Miro, colonel of the royal armies, governor, intendant of the province of Louisiana, East Florida, and inspector of its troops, &c.:

Having seen the foregoing acts performed (steps taken) by the surveyor of this province, Charles Trudeau, respecting the possession which he has given to William Cocke Ellis, of 800 square arpents of land, situated in the district of Natchez, in the section of country commonly called Buffaloe, bounded on one side by the land of Jesse Carter, on the other by the land of John Ellis, and on the other sides by vacant lands of the domain of his majesty, as is shown by the preceding figurative plan; and acknowledging that it is conformable with the order of survey, and the concessions (grants) made to the aforesaid neighbors, without their having suffered thereby *and* prejudice, or their having objected thereto, but that on the contrary they have consented to it, as is shown by their being present to said operations, approving them, as we do approve them, using the faculty which the king has granted us, we grant in his royal name to the aforesaid William Cocke Ellis the said 800 square arpents of land,

in order that as his own he may dispose and make use of them, conforming himself to the aforesaid measurement and to the conditions prescribed in the regulations of the matter.

We give these presents, signed with our hand, sealed with the seal of our arms, and countersigned by the undersigned secretary for his majesty in this Government. [L. S.]

NEW ORLEANS, 16*th February*, 1789.

ESTEVAN MIRO,
Pro md. of his Excellency.
ANDRE LOPEZ ARMESTO.

Then the following certificates from the board of commissioners west of Pearl river, in favor of John Ellis, were introduced by the plaintiff.

(Registers No. 837.)

No. 337, Mississippi territory.

Board of commissioners west of Pearl river, established by a law of Congress regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee.

John Ellis claims a tract of eight hundred arpens of land, situate in Wilkinson county, on the river Homochitto and Buffaloe creek, by virtue of a grant under the authority of the Spanish government to William Cocke Ellis, bearing date the sixteenth day of February, in the year one thousand seven hundred and eighty-nine, having such shape, form, and marks, both natural and artificial, as are represented in the plat annexed to said grant, and legally conveyed to the claimant.

We do certify, that the said John Ellis is confirmed in his title thereto by virtue of the articles of agreement and cessions between the United States and the State of Georgia.

Given under our hands, at the town of Washington, in the county of Adams, this nineteenth day of June, in the year one thousand eight hundred and five, and in the twenty-ninth year of the independence of the United States.

THOMAS RODNEY,
ROBERT WILLIAMS,
THOS. H. WILLIAMS,
Commissioners.

Attest: R. CLAIBORNE,
Clerk of the board.

LAND OFFICE, WASHINGTON, *April 9th*, 1825.

I certify that the foregoing is a true copy from the records of this office. B. R. GRAYSON, *Register.*

(Registers No. 837.)

No. 337, Mississippi territory.

Board of commissioners west of Pearl river, established by a law of Congress regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee.

John Ellis claims a tract of eight hundred arpens of land situate in Wilkinson county, on the river Homochitto and Buffaloe creek, by virtue of a grant under the authority of the Spanish government to William Cocke Ellis, bearing date the sixteenth day of February, in the year one thousand seven hundred and eighty-nine, having such shape, form, and marks, both natural and artificial, as are represented in the plat annexed to said grant, and legally conveyed to the claimant.

We do certify that the said John Ellis is confirmed in his title thereto by virtue of the articles of agreement and cession between the United States and the State of Georgia.

Given under our hands at the town of Washington, in the county of Adams, this nineteenth day of June, in the year one thousand eight hundred and twenty-five, and in the twenty-ninth year of the independence of the United States.

THOMAS RODNEY,
ROBERT WILLIAMS,
THOS. H. WILLIAMS,
Commissioners.

Attest: R CLAIBORNE,
Clerk of the board.

LAND OFFICE, WASHINGTON, *April 29th*, 1825.

I certify that the foregoing is a true copy from the records of this office. B. R. GRAYSON, *Register.*

Copy of certificate of evidence in support of claim.

Wednesday the 19th June, 1805, No. 837. John Ellis, 800 arpanes.

Produces in further support of his claim the last will and testament of his father, Richard Ellis, wherein he devises to the claimant the tract of land in question, which he heired from his son Richard Cocke Ellis, deceased, dated the 17th October, 1792. The will filed with claim No. 982.

Claim confirmed. Certificate issued, A 337.

LAND OFFICE, WASHINGTON, *April 11th*, 1824.

I certify that the forgoing is a true copy of the order of confirmation of the board of commissioners in the claim aforesaid.

B. R. GRAYSON, *Recorder.*

And then the following depositions were introduced and read to the the court on the part of the plaintiff:

District court of U. S., Mississippi district.

JOHN DOE, on the demise of Richard Jones and Mary Jones, his wife,
vs.
THOMAS ELLIS and Mary Ellis, infants, by Elijah Smith, their guardian ad litem.

Ejectment.

Interrogatories to be propounded to Amey Cocke, Martha Lacey,

Rachael Booker and B. C. Lacey, witnesses on the part of the plaintiff in the above cause, residing in Washington county, Kentucky.

Int. 1. Are you acquainted with the lessors of the plaintiff in this suit, Richard Jones and Mary, his wife? If so, state severally whether you are related, or the degree of your relationship, to said Mary Jones.

Int. 2. Was or was not the said Mary Jones once married to, and the wife of, a certain William Cocke Ellis? If she were, state her maiden name; at what time she was married to said William Cocke Ellis; where said marriage took place; where did said William Cocke Ellis reside previous and subsequent to said marriage; who was the father of said William Cocke Ellis; what issue was born (if any) of the said marriage between said William Cocke Ellis and Mary, his wife; the time of such births; the time of said William Cocke Ellis' death; whether the child or children which said William Cocke Ellis had by said Mary are dead or living; if dead, when and where they died.

Int. 3. When and where did the said Mary (widow of the said Wm. Cocke Ellis), intermarry with said Richard Jones?

Int. 4. Where have said Richard Jones and Mary, his wife, resided since their marriage; and have they continued in such married state from the period of their first marriage as aforesaid to the present time?

Int. 5. Do you, or either of you, know any thing further relative to the family of said William Cocke Ellis, or other matter that would be of advantage to said plaintiff in this cause? If so, state it.

MISSISSIPPI DISTRICT:

I, William Burns, clerk of the district court of the United States for the district of Mississippi, do certify the foregoing to be a true copy of the original interrogatories filed in my office in said cause.

Witness my hand and seal of said court, at Natchez, the 20th day of January, A. D. 1824.

[SEAL.]

WM. BURNS, *Clerk.*

UNITED STATES, *District of Mississippi, to wit:*

The United States of America, to Samuel Booker or John Hughes, jr., greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining Amey Cocke, Martha Lacey, Rachael Booker, and R. B. Lacey, Washington county, Kentucky, witnesses, in a certain cause now depending in the district court of the United States for the district aforesaid, wherein Richard Jones and wife, lessee, is plaintiff, and Thomas Ellis and Mary Ellis, by their guardian *ad litem*, are defendants, you are requested, at such certain days and places as you shall appoint, to call and cause the said witnesses to come before you, and them diligently examine on oath, and their examination into the district court aforesaid you distinctly and plainly set, together with this writ enclosed.

John Ellis claims a tract of eight hundred arpens of land situate in Wilkinson county, on the river Homochitto and Buffaloe creek, by virtue of a grant under the authority of the Spanish government to William Cocke Ellis, bearing date the sixteenth day of February, in the year one thousand seven hundred and eighty-nine, having such shape, form, and marks, both natural and artificial, as are represented in the plat annexed to said grant, and legally conveyed to the claimant.

We do certify that the said John Ellis is confirmed in his title thereto by virtue of the articles of agreement and cession between the United States and the State of Georgia.

Given under our hands at the town of Washington, in the county of Adams, this nineteenth day of June, in the year one thousand eight hundred and twenty-five, and in the twenty-ninth year of the independence of the United States.

THOMAS RODNEY,
ROBERT WILLIAMS,
THOS. H. WILLIAMS,
Commissioners.

Attest: R CLAIBORNE,
Clerk of the board.

LAND OFFICE, WASHINGTON, *April 29th*, 1825.

I certify that the foregoing is a true copy from the records of this office. B. R. GRAYSON, *Register.*

Copy of certificate of evidence in support of claim.

Wednesday the 19th June, 1805, No. 837. John Ellis, 800 arpanes.

Produces in further support of his claim the last will and testament of his father, Richard Ellis, wherein he devises to the claimant the tract of land in question, which he heired from his son Richard Cocke Ellis, deceased, dated the 17th October, 1792. The will filed with claim No. 982.

Claim confirmed. Certificate issued, A 337.

LAND OFFICE, WASHINGTON, *April 11th*, 1824.

I certify that the forgoing is a true copy of the order of confirmation of the board of commissioners in the claim aforesaid.

B. R. GRAYSON, *Recorder.*

And then the following depositions were introduced and read to the the court on the part of the plaintiff:

District court of U. S., Mississippi district.

JOHN DOE, on the demise of Richard Jones and Mary Jones, his wife,
vs.
THOMAS ELLIS and Mary Ellis, infants, by Elijah Smith, their guardian ad litem.

Ejectment.

Interrogatories to be propounded to Amey Cocke, Martha Lacey,

Rachael Booker and B. C. Lacey, witnesses on the part of the plaintiff in the above cause, residing in Washington county, Kentucky.

Int. 1. Are you acquainted with the lessors of the plaintiff in this suit, Richard Jones and Mary, his wife? If so, state severally whether you are related, or the degree of your relationship, to said Mary Jones.

Int. 2. Was or was not the said Mary Jones once married to, and the wife of, a certain William Cocke Ellis? If she were, state her maiden name; at what time she was married to said William Cocke Ellis; where said marriage took place; where did said William Cocke Ellis reside previous and subsequent to said marriage; who was the father of said William Cocke Ellis; what issue was born (if any) of the said marriage between said William Cocke Ellis and Mary, his wife; the time of such births; the time of said William Cocke Ellis' death; whether the child or children which said William Cocke Ellis had by said Mary are dead or living; if dead, when and where they died.

Int. 3. When and where did the said Mary (widow of the said Wm. Cocke Ellis), intermarry with said Richard Jones?

Int. 4. Where have said Richard Jones and Mary, his wife, resided since their marriage; and have they continued in such married state from the period of their first marriage as aforesaid to the present time?

Int. 5. Do you, or either of you, know any thing further relative to the family of said William Cocke Ellis, or other matter that would be of advantage to said plaintiff in this cause? If so, state it.

MISSISSIPPI DISTRICT:

I, William Burns, clerk of the district court of the United States for the district of Mississippi, do certify the foregoing to be a true copy of the original interrogatories filed in my office in said cause.

Witness my hand and seal of said court, at Natchez, the 20th day of January, A. D. 1824.

[SEAL.] WM. BURNS, *Clerk.*

UNITED STATES, *District of Mississippi, to wit:*

The United States of America, to Samuel Booker or John Hughes, jr., greeting:

Know ye, that trusting to your fidelity and provident circumspection in diligently examining Amey Cocke, Martha Lacey, Rachael Booker, and R. B. Lacey, Washington county, Kentucky, witnesses, in a certain cause now depending in the district court of the United States for the district aforesaid, wherein Richard Jones and wife, lessee, is plaintiff, and Thomas Ellis and Mary Ellis, by their guardian *ad litem*, are defendants, you are requested, at such certain days and places as you shall appoint, to call and cause the said witnesses to come before you, and them diligently examine on oath, and their examination into the district court aforesaid you distinctly and plainly set, together with this writ enclosed.

Witness the honorable Peter Randolph, judge of the district aforesaid, at the city of Natchez, in the district aforesaid, the first Monday in October, in the year of our Lord one thousand [L. S.] eight hundred and twenty-three, and in the forty-eighth year of the sovereignty and independence of the United States of America.

Issued the 20th day of January, 1824.

WM. BURNS, *Clerk.*

KENTUCKY, *Washington county, sct.*

As by the within commission we are commanded, we called the within witnesses, Amey Cocke, Rachael Booker, Batte C. Lacey, and caused them to come before us at the house of Mrs. Mary Jones, in the county and State aforesaid, on the date hereof, and having diligently examined them on oath touching the premises, and taken their examination in writing, subscribed by themselves respectively, we return their examination hereto annexed.

Given under our hands and seals this 14th February, 1824.

SAMUEL BOOKER, [SEAL.]
JOHN HUGHES, Jr. [SEAL.]

Copy of Depositions.

The deposition of Amey Cocke, aged about seventy-six years, taken at the residence of Mrs. Mary Jones, in Washington county, State of Kentucky, on Saturday, the 14th day of February, A. D. 1824, to be read on the trial of a certain action of ejectment now depending and undetermined in the district court of the United States for the Mississippi district, wherein John Doe, on the demise of Richard Jones and Mary Jones, his wife, are plaintiffs, against Thomas Ellis and Mary Ellis, infants, by Elijah Smith, their guardian *ad litem*, defendants; this deponent being first sworn, and the copy of certain interrogatories (which copy, certified by Wm. Burns, clerk, is hereto annexed,) being shown to, read, and examined by her, deposeth and sayeth:

In answer to the first interrogatory, she states, she has been acquainted with the lessors of the plaintiff, Richard Jones and Mary Jones, his wife, with said Richard from his being about one week old, and with said Mary from her birth; that the said Mary Jones is the daughter of this deponent, and the said Richard was the husband of the said Mary until the 4th day of January, 1824, when he departed this life.

In answer to the second interrogation she states, that the said Mary Jones was once married to and was the wife of William Cocke Ellis; her maiden name was Mary Cocke; that she was married to the said William Cocke Ellis on the second day of April, in the year 1789, (as well as she now recollects;) the said marriage took place in the house of this deponent and her husband Stephen Cocke, in then Amelia, now Nottoway county *county*, State of Virginia; previous to the said marriage, two or three years, the said William Cocke Ellis resided in the house of this deponent and her said husband, and continued to reside at the same place from the time of the said marriage until his death;

the name of his father was Richard Ellis; the issue born of said marriage between said William and Mary was but one, a boy child, born in or about the month of January, 1790, named Richard Cocke Ellis; the said William C. Ellis departed this life in the latter part of August, 1790; the child of said William Cocke Ellis and Mary, his wife, (the aforesaid Richard Cocke Ellis,) departed this life in the month of March or April, 1791, at the house of this deponent and her aforesaid husband, Stephen Cocke, in then Amelia, now Nottoway county, State of Virginia.

In answer to the 3d interrogation she states, that the marriage between the said Mary (widow of said William Cocke Ellis, dec'd,) and the said Richard Jones, took place about the 2d July, 1795, at the house of this deponent, she being then a widow, in then Amelia, now Nottoway county, State of Virginia.

In answer to the 4th interrogation she states, that the said Richard Jones and the said Mary, his wife, since their marriage, resided in the said county of Amelia for about three or four years, when they removed to the county of Pittsylvania, Virginia, where they resided until the spring of the year 1817; they removed to the county of Washington, in the State of Kentucky, where they have since resided together until the 4th January, 1824, the day of said Richard Jones's death, and where the said Mary Jones now resides; that the said Richard Jones and Mary continued in the married state from the period of their first marriage until the day of his death.

In answer to the 5th interrogation she states, she was well acquainted with Richard Ellis and Mary Ellis, his wife, the father and mother of the said William Cocke Ellis, (she, the said Mary Ellis, being a sister of this deponent's husband, the said Stephen Cocke;) the said Richard and Mary Ellis resided in the said county of Amelia, State of Virginia, until about the year 1773 or 1774, when they removed from Virginia, as this deponent was informed, to the Mississippi country. She further states that, so far as she knows or believes, the said William Cocke Ellis died intestate; she never heard of or saw any will of his.

AMEY COCKE.

Sworn to before us, the 14th February, 1824.

SAMUEL BOOKER, [SEAL.]
JOHN HUGHES, JR. [SEAL.]

Also, the deposition of Mrs. Rachael Booker, aged sixty-five years, taken at the same time and place, and to be read on the trial of the same suit, as the foregoing deposition of Mrs. Amey Cocke. The said Rachael Booker having seen and examined the same copy of interrogations hereto annexed, deposeth and sayeth, being first sworn:

In answer to the first interrogation, that she was acquainted with the lessors of the plaintiff, the said Richard Jones and Mary, his wife; she is related to them, being the sister of Amey Cocke, the mother of the said Mary Jones, and first cousin of Richard Jones.

In answer to the second interrogation she states, that the said Mary Jones was once married to and was the wife of a certain William Cocke Ellis; that her maiden name was Mary Cocke; that she was married (as this deponent was informed at the time) to the said William Cocke Ellis about the year 1789, at the house of Stephen Cocke, the father of said Mary, in the then county of Amelia, now Nottoway, in the State of Virginia; that the said William Cocke Ellis made his home at the house of the said Stephen Cocke for two or three years before his marriage, and from the time of his marriage until his death; that the father of said William Cocke Ellis was named Richard Ellis; that the said William Cocke Ellis and Mary, his wife, had but one child, a boy, named Richard Cocke Ellis, born before the death of its father, the said William Cocke Ellis; that the precise time of its birth, the death of its father, or death of the child, she cannot say, but knows that the child was born before its father's death and survived its father some short time; the said William Cocke Ellis and his son, Richard Cocke Ellis, both died at the house of Stephen Cocke, in Amelia county, Virginia.

In answer to the 3d interrogation she states, that Mary Ellis, widow of William Cocke Ellis, intermarried with Richard Jones at the house of Amey Cocke, mother of said Mary, in Amelia or Nottoway county, State of Virginia, the precise time not recollected.

In answer to the fourth interrogation she states, that Richard Jones and Mary, his wife, after their marriage, resided a short time in Amelia county; removed from thence to Pittsylvania, Virginia, where they resided until the year 1817; they removed to Washington county, Kentucky, where they resided until the time of Richard Jones's death, January, 1824, and where Mrs. Mary Jones now resides; she states that said Richard Jones and Mary continued to live together in the married state from the time of their marriage until the time of said Richard Jones's death.

In answer to the 5th interrogation she states, she was well acquainted with Richard Ellis and Mary Ellis, his wife, the father and mother of the said William Cocke Ellis; they lived in Amelia county, Va., until 1773 or 1774; they removed, as she was informed, to the Mississippi country. She farther states, that William Cooke Ellis, dec'd, made no will, so far as she was informed of. She farther states, that Richard Cocke Ellis, son of William Cocke Ellis and Mary, his wife, now Mary Jones, died previous to the month of May, 1792.

RACHAEL BOOKER.

Sworn to before us, February 14th, 1824.

SAMUEL BOOKER, [SEAL.]
JOHN HUGHES, JR. [SEAL.]

Also the deposition of Batte C. Lacey, aged 62 years, taken at the same time and place, and to be read on the trial of same suit as the foregoing. The said Batte C. Lacey having seen and examined the said copy of interrogations hereto annexed, and being first sworn, deposeth and sayeth:

In answer to the first interrogation he states, that he was well acquainted with Richard Jones previous to his death, which happened in January, 1824; that he has been acquainted with Mary Jones, now his widow, from the time of her infancy to the present day; that he is first cousin to said Mary Jones.

In answer to the second interrogation he states, that he has every reason to believe that the said Mary Jones was once married to, and was the wife of, a certain William Cocke Ellis; that he was also first cousin to William Cocke Ellis, and heard from various sources that they were married, but did not see them during the intermarriage; he saw Mrs. Jones shortly after the death of William Cocke Ellis, when she was reputed as his widow; the maiden name of the said Mary Jones was Mary Cocke; William Cocke Ellis resided for about two years before the marriage with Stephen Cocke, the father of said Mary, in Amelia or Nottoway county, Va., and continued to reside at the same place until his death; this deponent was well acquainted with the said William Cocke Ellis from his infancy until his death; they went to the same school when boys. The said William Cocke Ellis went with his father, Richard Ellis, to the Mississippi country about the year 1773; he was absent ten or twelve years, and returned to Virginia about the year 1785 or 1784; this deponent knows him to be the same man who was reputed to be the husband of the said Mary; he states farther, that he was informed from various sources at the time that the marriage took place in the year 1789; that they had but one child, named Richard Cocke Ellis, born in January, 1790; that William Cocke Ellis died in the month of August, 1790, and that his child, Richard Cocke Ellis, died in the month of April, 1791.

In answer to the 3d interrogatory he states, that Mary Ellis, the widow of the said William Cocke Ellis, intermarried with Richard Jones at the house of Amey Cocke, mother of said Mary, in Amelia or Nottoway county Va., in the year 1794 or 1795.

In answer to the 4th interrogation he states, that the said Richard Jones and Mary, his wife, after their intermarriage, resided for some time in Amelia county, Va., whence they removed to Pittsylvania county in the same State, until the year 1817; they removed to Washington county, Kentucky, where they resided until January, 1824, the time of Richard Jones' death, and where the said Mary Jones now resides.

In answer to the 5th interrogatory he states, he lived in the house of Richard Ellis, father of the said William Cocke Ellis, when a boy; that said Richard Ellis lived in Amelia county, Va., until the year 1772, '3, or '4, when he removed to the Mississippi country. He farther states, that when William Cocke Ellis returned from the Mississippi country to the State of Virginia, he came for the purpose of collecting some money due to his father from persons living in Virginia, and to settle up his father's business in that State. He never heard of any will being made by the said William Cocke Ellis, deceased.

BATTE C. LACEY.

Sworn to before us, February 14th, 1824.

SAMUEL BOOKER. [SEAL.]
JNO. HUGHES, Jr. [SEAL.]

It was admitted before the jury by the defendant that the premises embraced in the declaration were in the possession of the defendant at the time of suit brought, and that the titles read by plaintiff refer to the same.

And thereupon plaintiff closed his testimony, and it was agreed by the counsel on both sides that a verdict for the plaintiff should be entered *pro forma*, subject to the opinion of the court on the above case, and if the court should be of opinion that the plaintiff has not made out a sufficient case to recover upon in ejectment, then the verdict to be set aside and a judgment of non suit to be entered.

REID & GRIFFITH, *for Defendant.*
GEO. ADAMS, *for Plaintiff.*

And afterwards, to wit, at the November term, A. D., 1839, of said court, to wit, on the 28th day of November, A. D. 1839, until which time this cause was regularly continued, on motion of the plaintiff it was ordered by the court, that judgment be entered for plaintiff according to verdict. And afterwards, to wit, at the November term of said court, in the year of our Lord one thousand eight hundred and forty-one, to wit, on the eighth day of December, in the year of our Lord one thousand eight hundred and forty-one, the following agreement was made and entered into in said case, to wit:

It is agreed by and between the parties in the above cause, by Daniel Mayes, esq., as counsel for the lessees of the plaintiff, and by John A. Quitman, esq., counsel for the defendants, that René Laroche, who hath intermarried with the defendant, Mary Ellis, and also Stephen G. Ellis, and Thomas Laroche Ellis, the three latter infants, heirs of Thomas G. Ellis, deceased, who is deceased since the said verdict, be made defendants to this suit, and be admitted to appear by their guardian ad litem, Charles G. Dahlgren; it is agreed and admitted that the value of the land in controversy exceeds two thousand dollars. It is also agreed that a writ of error may be taken at any time, limited by law from the judgment of this court in this case, without security, to the Supreme Court of the United States, and that the same may be there docketed by consent of parties.

It is further agreed that this agreement be entered upon the minutes of this court, and be made a part of the record.

J. A. QUITMAN,
Of counsel for def'ts.
DANIEL MAYES,
Attorney for lessees of plaintiff.

And afterwards, to wit, at the said November term of the court first aforesaid, to wit, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and forty-six, in this cause, it

having been suggested to the court by the counsel for the defendants, and not denied but admitted, that Thomas G. Ellis, one of the original defendants in this cause, had died since the rendition of the verdict in this cause, and that Inez R. Ellis, Stephen P. Ellis, and Thomas Laroche Ellis are the heirs at law of the said Thomas G. Ellis, deceased, and are minors. It is therefore ordered by the court, that the plaintiffs have leave to revive their action against said minor heirs; and the said minor heirs come into court by their guardian ad litem, Charles G. Dahlgreen, and enter themselves by said guardian as defendants to said suit, and the same is accordingly revived against them.

And thereupon the plaintiff comes into court, and asks leave to amend his declaration by extending the demise therein for the space of one hundred years, which the court permitted upon condition that the order for a judgment made at the November term, 1839, of this court should be set aside, and the cause be again submitted for judgment on the verdict heretofore rendered on the case agreed upon; said terms were accepted, and said order for judgment at the November term, 1839, was set aside, and the plaintiff thereupon amended his declaration by extending the demise in said declaration for one hundred years. And thereupon came into court Réné La Roche, who hath intermarried with the defendant, Mary Ellis, and also Inez R. Ellis, Stephen P. Ellis, and Thomas La Roche Ellis, the three latter being infant heirs of Thomas G. Ellis, deceased, who hath departed this life since the finding of the verdict herein, and Charles G. Dahlgreen is hereby appointed guardian ad litem to defend for said infants; and on motion of plaintiff, and by consent of said La Roche and wife, and said Inez R. Ellis, Stephen P. Ellis, and Thomas La Roche Ellis, by said Dahlgreen, their guardian ad litem, they being the tenants in possession, and claiming title under the said Thomas G. Ellis, deceased, this cause is revived against them.

Whereupon the cause so revived came on to be heard upon the special verdict found herein, and the court being now sufficiently advised of and concerning the matters of law arising herein, it seems to the court that the law is for the plaintiff.

Therefore, it is considered by the court that the plaintiff recover of said defendants his term yet to come and unexpired in and to the lands in the declaration mentioned, and also his costs and charges in this behalf expended.

And the said defendants, in mercy, &c.

From which judgment the said defendants pray a writ of error to the Supreme Court of the United States, which is granted, upon their giving a writ of error bond, which is accordingly filed and approved by the court.

And thereupon it is further agreed by the parties that the land in contest is of greater value than three thousand dollars. It is also further agreed that, in the event that the plaintiff recover, that the said Charles G. Dahlgreen will pay to the plaintiffs, by way of rents and profits, at the rate of four hundred dollars per annum from the time possession was

delivered under the writ of habere facias, which has been this day quashed; and that, in consideration that the plaintiffs have forborne to sue for the rents and profits which had accrued before the execution of said writ, that the statute of limitations shall be, and is hereby, waived, and the plaintiffs shall have the same right of recovery which he would have had had his action for mesne profits been instituted upon the day said writ issued.

Copy of writ of error bond.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that I, Charles G. Dahlgreen, am held and firmly bound unto John Doe in the just and full sum of one thousand dollars, lawful money of the United States, to be paid to the said John Doe, his lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, he binds himself, his heirs, executors, and administrators, firmly by these presents. Sealed with my seal, and dated the seventeenth day of November, A. D. one thousand eight hundred and forty-six.

The condition of the above obligation is such, that whereas, at a term of the circuit court of the United States, for the southern district of Mississippi, commenced and held at the city of Jackson, on the first Monday of November, A. D. 1846, judgment was rendered by said court in favor of the said John Doe, as lessee of Jones and wife, against Réné La Roche and Mary, his wife, Inez R. Ellis, Stephen P. Ellis, and Thomas La Roche Ellis, minors, heirs of Thomas G. Ellis, deceased, by their guardian ad litem, Charles G. Dahlgreen, for his unexpired term of one hundred years in certain tracts or parcels of land, with the appurtenances, situate and lying in the county of Wilkinson, and State of Mississippi, which demised premises were originally granted by the Spanish government of West Florida to a certain William Cocke Ellis, by letters patent bearing date the 16th day of February, 1789, adjoining to lands of Jesse Carter, John Ellis, sen., Mary Ellis, and vacant lands, and also for the costs of suit; and the said Réné La Roche and Mary, his wife, Inez R. Ellis, Stephen P. Ellis, and Thomas La Roche Ellis, by their said guardian ad litem, have sued out a writ of error from the Supreme Court of the United States to reverse said judgment.

Now, if the said Réné La Roche and Mary, his wife, Inez R. Ellis, Stephen P. Ellis, and Thomas La Roche Ellis, by their said guardian, shall prosecute their said writ of error to effect, and shall well and truly pay and satisfy all such costs as the said Supreme Court of the United States shall adjudge in the premises, if they shall fail to prosecute their said writ of error with effect, then and in that case this obligation to be void, otherwise to remain in full force and effect.

C. G. DAHLGREEN. [SEAL.]

Witness: WM. YERGER.

UNITED STATES OF AMERICA,
Southern district of Mississippi:

Circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing thirty-two pages contain a full, true, and complete transcript of the record of the judgment in the case therein named as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court, at Jackson, this 19th day of February, A. D. 1847.

[SEAL.]

W. H. BROWN, *Clerk.*

Filed 29th June, 1847.